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CHICAGO, ILL.
1914

NOTICE OF THE AMERICAN MEDICAL ASSOCIATION
TO THE PUBLIC
THE AMERICAN MEDICAL ASSOCIATION
HAS THE HONOR TO ANNOUNCE
THAT IT HAS BEEN DECIDED
TO PUBLISH A JOURNAL
OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

A. B. ROFF,
Plaintiff in Error,

vs.

LOUISA BURNEY, as Adminis-
tratrix of B. C. BURNEY, de-
ceased.

In Error to the
United States Court
in the Indian
Territory, Southern
District.

MOTION OF A. B. ROFF, PLAINTIFF IN
ERROR, FOR REHEARING.

And now comes A. B. Roff, plaintiff in error,
by his counsel, C L. Herbert, and moves this hon-
orable court to set aside the judgment rendered
and entered herein November 29, 1897, and grant

him a rehearing, and as ground of said petition he states:

First. The plaintiff in error, A. B. Roff, in his amended complaint, filed in the court below, having alleged, in substance: That in the year 1857 the legislature of the Chickasaw Nation passed an act adopting as citizens of the Chickasaw Nation the "heirs and nephews of Wm. H. Bourland, to wit: Amanda, Matilda, Gordentia and Run Hannah Bourland;" that subsequent thereto, to-wit: October 7, 1876, the same legislature passed another act adopting as citizens of the Chickasaw Nation the heirs and nephews of said Wm. H. Bourland, naming them, which last named act is alleged to be a confirmation of said act of 1857, and "that said children and nephews of said Wm. H. Bourland, aforesaid, by reason and by virtue of said act of said Chickasaw legislature, became and were and ever since said year, 1857, have been members of the tribe of Chickasaw Indians and citizens of said Chickasaw Nation, and as such, were, and ever since said date have been entitled to all the rights, immunities and privileges of a Chickasaw Indian by blood, guaranteed unto him by the constitution and laws of the United States, the constitution and laws of said Chickasaw Nation, and the TREATIES between the government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians." And having further alleged in said complaint "That on or about the 13th day of November, 1867, according to the laws, customs and

usages of said tribe of Chickasaw Indians and of said Chickasaw government, "he [the plaintiff, A. B. Roff,] was duly and legally married to the said MATILDA BOURLAND [adopted by said act of said legislature as a citizen of said Nation and member of said tribe, as aforesaid,] and that by reason and virtue of said intermarriage with said Matilda Bourland, under the constitution and laws of the United States, the constitution and laws of said Chickasaw Nation, and the TREATIES between the United States government and the Chickasaw and Choctaw tribes of Indians, he became and was, and ever since said date has been a member of the tribe of Chickasaw Indians, and a citizen of said Chickasaw government, and entitled to all the rights, privileges and immunities of a Chickasaw Indian by blood." R. 1 and 2.

THIS HONORABLE COURT ERRED in holding that, under the allegations in said complaint, that the Chickasaw legislature, by act passed October 11, 1883, could and did withdraw and destroy the right of Chickasaw citizenship thus acquired by MATILDA BOURLAND and A. B. ROFF, for the reason that the right of Chickasaw citizenship is a valuable and vested right, and cannot be destroyed by legislation or judicial decree, and for the further important reason that the status of Matilda Bourland, as an adopted member of said tribe, and of A. B. Roff, as a member thereof by intermarriage, was fixed and established by ARTICLE 38 OF THE TREATY OF 1866, between the United States and the Choctaw and Chickasaw

tribes, long prior to the act of 1883 of said Chickasaw legislature, and therefore said repealing act is in direct contravention of said article of the treaty which reads:

“Every white person who, HAVING MARRIED A CHOCTAW OR CHICKASAW, resides in the Choctaw or Chickasaw Nation, OR WHO HAS BEEN ADOPTED BY THE LEGISLATIVE AUTHORITIES is to be deemed a member of said Nation in all respects as though he was a native Choctaw or Chickasaw.” [14 Stat. 779.]

Second. The Court erred in holding that the right of Chickasaw citizenship is a personal and not a valuable and vested right, and therefore can be withdrawn by the Chickasaw Nation, such holding being in conflict with article 26 of said treaty of 1866 which reads: “The right here given, [referring to the right to participate in allotment of the Choctaw and Chickasaw lands], to Choctaws and Chickasaws, respectively, shall extend to ALL PERSONS WHO HAVE BECOME CITIZENS BY ADOPTION OR INTERMARRIAGE of either of said nations OR WHO MAY HEREAFTER BECOME SUCH, [14 Stat. 777,] and because to destroy by legislation, or other wise, the right of Chickasaw citizenship under the treaty, is the destruction of the valuable right to allotment.”

Wherefore, because the decision of this court which in effect decitizenizes the plaintiff in error and his family, as members of the tribe of Chickasaw Indians and thereby destroys their treaty and valuable right to participate in the allotment

of the Chickasaw lands, he prays that he be permitted to file briefs of his authorities, and that his counsel be also allowed to make an oral argument in support of the forgoing petition, and upon final hearing that this honorable court set aside the judgment rendered herein November 29, 1897.

C. L. HERBERT

Counsel for A. B. Roff, Plaintiff in Error.

AGREEMENT OF COUNSEL.

We, the undersigned, attorneys for Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant in error, hereby accept full and complete service and notice of the foregoing petition for rehearing, and agree that the same may be presented or submitted to the supreme Court of the United States on either printed briefs or oral argument of counsel for plaintiff in error, or both, at such time as said court is willing to hear the same. And we further agree that the Supreme Court in passing upon this petition for a rehearing may consider any and all treaties heretofore made by the United States with the Choc-taw and Chickasaw tribes of Indians and the con-

stitution and laws of the Chickasaw Nation without further notice to us.

ROBT. H. WEST,

H. C. POTTERF,

W. F. BOWMAN,

Attorneys for Mrs. Louisa
Burney, as administratrix of B. C. Burney, deceased, defendant in error.

CERTIFICATE OF COUNSEL.

INDIAN TERRITORY,
SOUTHERN DISTRICT.

Before me, the undersigned authority, on this day personally appeared C. L. Herbert, counsel for A. B. Roff, plaintiff in error in the foregoing petition for rehearing, who, after being duly sworn, deposes and says that in his opinion said petition in point of law is well founded, and that said petition is not interposed for delay, but that justice may be done.

C. L. HERBERT.

Subscribed and sworn to before me this 17th day of December, 1897.

JESSE H. HILL,
[L. S.] Notary Public, Southern District,
Indian Territory.